

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Revision Application No.S-70 of 2024
[Yousif v Ghulam Mustafa & 9 others]

Criminal Revision Application No.S-101 of 2024
[Benjamin v Ghulam Mustafa & 9 others]

<><><>

Mr. Wajid Ali Khaskheli, Advocate for Applicants.
Mr. Zulfiqar Ali Laghari, Advocate for Respondent No.2.
Mr. Neel Parkash, Deputy Prosecutor General (Sindh).

<><><>

Date of hearing **09.12.2025**

Date of order **24.12.2025**

<><><>

ORDER

Shamsuddin Abbasi, J:- Benjamin and Yousif are brother and sister interse, the applicants, claim to be the lawful owners of House/Plot Nos.55 and 56 respectively, situated in Christian Colony, Sanghar City, Taluka and District Sanghar ("subject property"), by virtue of Entry No.1/55 and Entry No.1/56 respectively in the record of the City Survey Department, Sanghar. They have filed their respective complaints under Sections 3(2), 4, 5, 7, and 8 of the Illegal Dispossession Act, 2005 ("Act, 2005") alleging that on 11.10.2020 the respondents/ proposed accused while armed with deadly weapons forcibly entered the subject property and illegally and unlawfully dispossessed them by occupying the same on the pointation of weapons.

2. The learned Additional Sessions Judge-II, Sanghar ("the trial Court"), after hearing the parties' respective counsel, dismissed both complaints placing reliance upon the report of the concerned SHO vide separate orders dated 17.04.2021 ("impugned orders"). Aggrieved of the said orders, the applicants/ complainants have filed the instant Criminal Revision Applications, which are being decided together through this single order.

3. It is contended on behalf of the applicants that they are the lawful owners of the subject property by virtue of registered deeds executed in their favour by the Sindh Katchi Abadis Authority and that on the basis of such leases the subject properties stand transferred in their names

through entries made in their favour in the record of rights. It is next submitted that the learned trial Court passed the impugned order merely on the basis of the report of SHO and the pendency of civil litigation, without appreciating the fact that the applicants were in possession of the property as is evident from police report and one of the respondent/accused is serving in police department and he has managed false and fake reports. It is also submitted that the witnesses in their statements have fully supported the case of the applicants, however, despite such material the learned trial Court dismissed the complaints at the preliminary stage without holding any detailed inquiry or directing investigation which is contrary to the settled precedents laid down by the Hon'ble apex Court. Per learned counsel, the inquiry officer has conducted dishonest investigation and manipulated the statements of witnesses just to extend favour to the proposed accused. While emphasizing his submissions, the learned counsel argued that the impugned orders are bad in law and facts, have been passed without proper application of a conscious judicial mind and are therefore liable to be set aside and prayed accordingly.

4. On the other hand, the learned counsel appearing for the respondent No.2 has supported the impugned orders and submitted that the learned trial Court has rightly dismissed the complaints in view of the contradictions appearing in the complaints and the police report as well as the pendency of civil litigation in respect of the disputed property. It is next submitted that the question of ownership of the disputed property squarely falls within the jurisdiction of Civil Court(s), which is already seized of the matter in the pending suit and prayed for dismissal of revisions applications.

5. The learned Deputy Prosecutor General has adopted the arguments advanced by the learned counsel for respondent No.2 and submitted that the applicants have failed to make out a case for interference.

6. I have given my anxious consideration to the submissions of respective sides and perused the entire material available before me with their able assistance.

7. The applicants claim to be the owners of the disputed property on the basis of registered lease deed executed in their favour by Katchi Abadis Authority, vide Registration No.789 and 788 dated 25.06.2020 and based on

such registered deed the properties in question stand recorded in their names in the record of right by way of a valid entry. On the other hand, the respondents /proposed accused took stance before trial Court that the properties in question belong to their ancestral properties and civil litigation is pending before the competent Court. The learned trial Court dismissed the complaints observing as under:-

"2. The learned advocate for the accused persons opposed these complaints strongly and submitted that the complaints are not maintainable for the reason that there are contradictions of the facts in the complaints. According to the contents of Para 02 of both complaints, which are reproduced below:-

'That on 11.10.2020 at about 07:00 PM the complainant alongwith Najaf Khan s/o Alla Rakho, Elfian s/o Ashique and Michal s/o Abdullah were present his house, where the accused persons duly armed with deadly weapons, illegally and malafidely criminal trespassed the above said house of the complainant and used filthy language and by making aerial firing disposed the complainant with the force of deadly weapons from his house and occupied upon the house of the complainant and claimed that the same is belongs to them without any title documents'.

3. While according to the report of the SHO Sanghar the complainants are residing Christian Colony Sanghar and have filed the complaints against Ghulam Mustafa Brohi and others under Illegal Dispossession Act, 2005, he visited site i.e. Plot No.55 and 56 of Christian Colony, where Benjamin and Yousif, who during course of enquiry confirmed that the accused persons have occupied their personal plots on which they have constructed their houses where they are living since 1966. Thereafter due to their personal work after closing their houses shifted to Karachi on 11.10.2020 the accused persons occupied their houses and removed the house hold articles from there and have constructed their own houses. The said plot was given to them by Katchi Abadi Authority for which they have Sanads. The witnesses who are same of the Para No.2 of the complaint also confirmed the statement of the complainant before SHO P.S. Sanghar. It was pointed out by the learned advocate Mr. Jamshed Ali Laghari for the accused that the witnesses of the complainant and the complainant have in their statement before the police have mentioned that in absence of the complainant when the house in question was occupied, the accused persons trespass into the house and taking away house hold articles and are carrying construction on their personal houses. The SHO also recorded also recorded the statement of the accused persons namely Mansoor Ali Nizamani, who stated that the disputed plots are their ancestral property. There is civil suit pending in the civil Court in respect of the controversy the orientation of disputed plot, whether it pertains to the Katchi Abadi or it pertains to the Village VII-B of the accused persons.

4. The complainant advocate was heard at length about the controversy, but he could not satisfactorily explain about two versions of the complainant side one taken in the complaint and other taken before police. The contention of the learned advocate is that SHO

recorded the statement. However, in the course of arguments, the learned advocate for the complainant also could not explain this controversy satisfactorily. It is a fact that the proposed accused Mansoor has filed a Civil Suit in respect of disputed property in the Court of IInd Senior Civil Judge Sanghar bearing Civil Suit No.84/2012, which is pending. In the said suit the controversy about the suit land is also under consideration.

5. In view of the above discussion, I am of the view that since the direct complaint are based on two versions of the complainant side, therefore, it is ambiguous and no finding can be given in the present form of the complaint, which is not entertain-able under Illegal Dispossession Act, 2005 as such the same are hereby dismissed. However, complainants are at liberty to join the civil suit pending in respect of the property in question, if so desired. The complaints are hereby dismissed accordingly".

8. Reviewing the above findings, it is noted that the learned trial Court has dismissed the complaints on two grounds (i) alleged inconsistencies between the versions set out in the complaints and the police report and (ii) the pendency of civil litigation in respect of the disputed property. It is noteworthy that the applicants/ complainants claim ownership of the property on the basis of registered title documents as well as entries in their favour in the record of rights, which are part of record of this case. It is also an admitted position that the learned trial Court has dismissed the complaints at the very initial stage, without ordering an investigation, solely relying on the police report submitted after a formal inquiry. An inquiry is a limited process undertaken to assess an allegation for the purpose of determining whether the allegation is tenable, the particular law or laws that may have been breached and whether on the basis of the information provided a formal investigation is warranted whereas an investigation is a comprehensive and systematic process conducted by an authorized agency to ascertain the truthfulness of an allegation. It entails collection, examination and evaluation of evidence and culminates in an opinion as to whether an offence has been committed. Where the aforesaid parameters cannot be conclusively satisfied through an inquiry alone, it becomes incumbent upon the Court to order an investigation. This is so because an investigation affords both the complainant and the accused an effective opportunity of being heard and ensures adherence to the principles of due process. It enables the parties to produce all admissible material, narrows down the controversy and assists the Court through tangible evidence collected during the course of investigation. In the present case the learned trial Court has failed to exercise jurisdiction vested in it by law as it neither conducted any meaningful inquiry nor

deemed it appropriate to order an investigation. In the given circumstances, the allegations levelled in the complaints being duly supported by registered documents squarely called for a thorough and impartial investigation. The so-called inconsistencies in the complaints and the inquiry report are of no legal consequence particularly when the applicants/ complainants have categorically denied the same and have specifically alleged that the inquiry officer manipulated the statements of witnesses. Furthermore, it is an admitted fact that at the time of inquiry the applicants/ complainants were in possession of the disputed property. Despite these material aspects the learned trial Court dismissed the complaints at the initial stage merely on the ground of alleged contradictory versions, which amounts to misreading of the record and non-application of judicial mind. The impugned findings are thus not sustainable in the eyes of law.

9. The second ground relied upon by the learned trial Court for dismissing the complaints viz pendency of civil litigation is equally untenable. The applicants /complainants allege their illegal dispossession from the disputed property on 11.10.2020 whereas the civil suit pertains to the year 2012. When the applicants claim ownership on the basis of registered documents the mere pendency of a civil suit has no direct nexus with the alleged criminal acts and does not by itself bar criminal proceedings under the Act, 2005. Guidance in this behalf is taken from the case of *Shaikh Muhammad Naseem v. Mst. Farida Gul* (2016 SCMR 1931), wherein the Hon'ble Supreme Court has held that criminal proceedings cannot be scuttled merely on the ground of parallel civil litigation. Relevant excerpt is reproduced below:-

"5. In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immovable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some

civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law.

6. The above are the detailed reasons of our short order of even date whereby while relying on five Member Bench judgment of this Court dated 18.07.2016 rendered in the case of Gulshan Bibi v. Muhammad Sadiq in Civil Petition No.41/2008 and Civil Appeals Nos.2054/2007 and 1208/2015, this appeal was disposed of and the matter was remanded back to the learned Trial Court for its disposal on merits.

10. For the foregoing reasons, I am of the considered view that the learned trial Court has passed the impugned orders dismissing the complaints under the Illegal Dispossession Act, 2005, without adopting the requisite course of a meaningful inquiry or ordering an investigation as mandated by law. Consequently, the orders dated 17.04.2021, passed in Criminal Complaint No.03 of 2021 (Benjamin v. Ghulam Mustafa and others) and Criminal Complaint No.04 of 2021 (Yousif v. Ghulam Mustafa and others), impugned herein, are set aside. The matters are remanded to the learned trial Court with the direction to decide the complaints afresh after conducting a meaningful inquiry and/ or ordering an investigation from the concerned quarters and upon consideration of the material made available before it strictly in accordance with law.

11. The Criminal Revision Application No.S-70 of 2024 and Criminal Revision Application No.S-101 of 2024 are allowed in the above terms. It is, however, clarified that the observations made herein are confined only to the instant revision applications and shall not prejudice or bind the Civil Court(s) while deciding the issue of ownership of the subject property etc in the pending suit(s), which shall be adjudicated on their own merits and on the basis of the material available on record without prejudice to either party.

JUDGE